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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN A. MACGREGOR,

Plaintiff,

v.

DR. MARTIN, et al.,

Defendants.

No. C 13-2309 RMW (PR)

**ORDER OF DISMISSAL OF
CLAIMS AGAINST
DEFENDANT NURSE YAN**

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint against prison officials at San Quentin State Prison ("SQSP"), pursuant to 42 U.S.C. § 1983. The court ordered service of plaintiff's civil rights complaint upon defendants Dr. Martin and Nurse Yan. (Docket No. 7.) On August 26, 2013, service documents sent to defendant Nurse Yan at SQSP were returned undeliverable with a notation that Nurse Yan was not at San Quentin. (Docket No. 9.) On October 23, 2013, the court directed plaintiff to provide the court with an accurate and current location for defendants Dr. Martin and Nurse Yan. Plaintiff was advised of the risk that his claims against unserved defendants being dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (Docket No. 12.) On January 9, 2014, plaintiff filed a response to the court's order indicating that defendant Nurse A. Yan was employed at the San Quentin Neumillar Infirmary, between 2004 to approx. 2008. (Docket No. 23.)

On February 18, 2014, in the interest of justice, the court requested that the SQSP

1 Litigation Coordinator determine whether defendant Nurse A. Yan, identified as having worked
2 at SQSP Neumiller Infirmary between 2004 to approximately 2008, was a former employee of
3 SQSP, and if so whether defendant Nurse A. Yan was still employed with the California
4 Department of Corrections and Rehabilitation ("CDCR"), and to provide the court with current
5 employment address for the defendant, or notice that such information is not available. (Docket
6 No. 25.) On July 18, 2014, the court received a letter from SQSP Litigation Coordinator
7 indicating that there was no employee known as Nurse A. Yan and that more identifying
8 information was needed. (Docket No. 26.) On September, 24, 2014, the court directed plaintiff
9 to once again provide more identifying information for defendant Nurse A. Yan. Plaintiff was
10 warned that failure to do so would result in plaintiff's claims against defendant Nurse A. Yan
11 being dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil
12 Procedure. (Docket No. 29.) Plaintiff provided a response to the court's September 24, 2014
13 order indicating that the correct spelling of the defendant's name is "Yin." (Docket No. 36.)

14 On December 14, 2014, the court issued an order of service directing the clerk of the
15 court to mail a Notice of Lawsuit and Request for Waiver of Service of Summons to Nurse Yin
16 at SQSP. On January 2, 2015, the court received a letter from SQSP Litigation Coordinator
17 indicating that no employee by the name Nurse Yin could be located. (Docket No. 38.) On
18 March 27, 2015, the court received a follow-up letter from SQSP Litigation Coordinator
19 indicating that although it appears as though defendant Nurse Yan was assigned to SQSP on or
20 about October - December 2005, said defendant is no longer employed by CDCR and the lack of
21 records of defendant Nurse Yan is explained by the institutions 5 year record retention policy for
22 previous employees. (Docket No. 42.)

23 The court's October 23, 2013, and September 24, 2014, orders cautioned plaintiff that if
24 plaintiff failed to provide accurate and current location information for defendant Nurse Yan,
25 said defendant would be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules
26 of Civil Procedure. (Docket Nos. 12, 29.) The court has provided plaintiff with several
27 opportunities to provide the requested information. (Docket Nos. 12, 29, 35.) The court has also
28 made multiple attempts to locate and serve defendant Nurse Yan. (Docket Nos. 7, 37.) Despite

1 these efforts, plaintiff has yet to provide an accurate location for Nurse Yan to effectuate service.
2 See Fed. R. Civ. P. 4(m). Accordingly, defendant Nurse Yan is **DISMISSED** from this action
3 without prejudice.

4 IT IS SO ORDERED.

5 DATED: Í 10 11


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN A. MACGREGOR,
Plaintiff,

v.

M.D. MARTIN, et al.,
Defendants.

Case No. [13-cv-02309-RMW](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 28, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kevin A. MacGregor ID: V-94008
Bldg #A-5,138
High Desert State Prison
PO Box 3030
Susanville, CA 96127

Dated: May 28, 2015

Richard W. Wieking
Clerk, United States District Court

By: _____
Jackie Lynn Garcia, Deputy Clerk to the
Honorable RONALD M. WHYTE

United States District Court
Northern District of California